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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	
PETITION TO AMEND)	Supreme Court No. R-08-_____
RULE 39, ARIZONA RULES OF)	
CRIMINAL PROCEDURE)	
_____)	

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Administrative Director, respectfully petitions this Court to adopt the proposed amendment to Rule 39 of the Arizona Rules of Criminal Procedure to conform to related statutory amendments adopted in 2005.

I. Background and Purpose of the Proposed Rule Amendment

Victims are authorized by Rule 39(b)(4) to be present at all proceedings the defendant is entitled to attend. Nevertheless, on at least one occasion, the current definition of victim in Rule 39(a) has led a trial judge to exclude the sibling of a murder victim from the courtroom during a trial pursuant to Rule 9.3, because the sibling was scheduled to testify in the trial. Rule 9.3 specifically exempts from exclusion those witnesses who are “victims as defined in rule 39a.”

When the original version of Rule 39(a) was adopted in 1989, the definition included the “spouse, parent, legal guardian, child, or sibling of someone killed.” Two years later, the court amended the rule to conform the definition to the Victim’s Bill of Rights provision in the Arizona Constitution (Art. II, sec. 2.1) enacted in 1990. That definition reads, “a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person’s spouse, parent, child or other lawful representative.”

In the First Regular Session of the Forty-Seventh Legislature (2005), the Legislature passed Senate Bill 1429. The Governor signed the bill on May 20, 2005 (Chapter 325). The bill made a number of changes relating to capital cases and broadened the definition of “victim” appearing in A.R.S. §§ 8-382, 13-703.01, -703.03, and -4401 to read:

"Victim" means . . . if the person is killed or incapacitated, the person's ~~immediate family~~ SPOUSE, PARENT, CHILD, GRANDPARENT OR SIBLING, ANY OTHER PERSON RELATED TO THE PERSON BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE or ANY other lawful representative OF THE PERSON, except if the ~~person~~ SPOUSE, PARENT, CHILD, GRANDPARENT, SIBLING, OTHER PERSON RELATED TO THE PERSON BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE OR OTHER LAWFUL REPRESENTATIVE is in custody for an offense or is the accused.

According to a Senate Fact Sheet for SB 1429, the expanded definition was intended to clarify who is included in “immediate family” membership, a term that had been added to the definition by Laws 2001, Chapter 334 (HB 2223).

II. Contents of the Proposed Rule Amendment

The proposed amendment to Rule 39(a) will conform the rule's definition of victim to the criminal statutes referenced above.

III. Pre-Petition Distribution and Comment

The petition has not circulated to any committees or individuals.

Wherefore, petitioner respectfully requests that the Supreme Court amend 39(a) as set forth in Appendix A.

RESPECTFULLY SUBMITTED this _____ day of _____, 20____

By /S/_____
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Appendix A

Arizona Rules of Criminal Procedure

Rule 39. Victims' Rights

a. Definitions.

1. *Victim.* As used in this rule, a "victim" is defined as a person against whom a criminal offense as defined by 13-4401(6) has allegedly been committed, or if the person is killed or incapacitated by the alleged criminal offense, the person's spouse, parent, lawful representative or child, grandparent, sibling, any other person related to the person by consanguinity or affinity to the second degree, or any other lawful representative of the person ~~of someone killed or incapacitated by the alleged criminal offense~~, except where the spouse, parent, ~~lawful representative or child, grandparent, sibling, any other person related to the person by consanguinity or affinity to the second degree, or other lawful representative~~ is also the accused. With regard to the rights to be notified and to be heard pursuant to this rule, a person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition. If a victim is in custody for an offense, the victim's right to be heard pursuant to this rule is satisfied through affording the victim the opportunity to submit a written statement, where legally permissible and in the discretion of the court. A victim not in custody may exercise his or her right to be heard pursuant to this rule by appearing personally, or where legally permissible and in the discretion of the court, by submitting a written statement, an audiotape or videotape. The victims' rights of any corporation, partnership, association, or other similar legal entity shall be limited as provided by statute.

2. [no changes]

b. through g. [no changes]